



Case Report

1	Case Number	0071/15
2	Advertiser	Ashley Madison - Avid Life
3	Product	Professional Service
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	11/03/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- Other Social Values
- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

A guy starts singing a catchy jingle, "looking for someone other than my wife.." He is joined by another man who is singing the same jingle and scrolling the website on a tablet device in the same manner as if he were playing a guitar. Images of women are shown on the tablet. We then see a collage of other men singing the same jingle.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

This advertising is blatantly promoting infidelity on television. This is not appropriate, this advertising is readily available on the internet where it should only be because you have no control. This is open for all adults and children to see. Disgusting, what has the world come to.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Ashley Madison (“AM”) is in receipt of a letter from the Advertising Standards Bureau (“ASB”) regarding a complaint received by the ASB, concerning Ashley Madison’s “Wife_No Tag” commercial (the “AM Advertisement”).

Please note, once again, that AM is familiar with the AANA Code of Ethics, having conducted several different advertising campaigns in Australia, and understands the parameters that advertisers need to operate within. The Code has been continuously reviewed internally before any advertisements are submitted in Australia, and on an on-going basis. However, AM respectfully disagrees with the current complaints, and asks that the ASB dismiss it at the forthcoming meeting of the Board.

With respect to the issues raised in the Complaints, the AM Advertisement does not contravene or violate section 2 of the Code in any manner. In sticking to the letter of the Code, the AM Advertisement is compliant with both the Code and the applicable laws in Australia. The AM Advertisement is legal and in complete compliance with the Code; and the social networking service that Ashley Madison provides is fully legal and compliant with all laws in Australia.

Section 2.1 - The referenced AM Advertisement does not discriminate on any basis whatsoever, does not vilify any women, nor does it exploit, condone or elicit unlawful behavior. The AM Advertisement does not exploit sex and sexuality. It simply contains a somewhat humorous and catchy jingle.

Section 2.2 - Moreover the AM Advertisement does not generalize, degrade, exploit or disparage either gender, and it does not offend the standards of public decency prevailing among a significant segment of the population. This is simply a vocal minority raising such complaints.

Section 2.3 – There is absolutely no violence, gratuitous or otherwise, whatsoever in the AM Advertisement.

Section 2.4 - This section states that Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience. We respectfully believe that this commercial accomplishes this. There is absolutely no nudity, no reference of sex or sexuality, nor any sexual/physical contact between the actors in the spot. Due to the “S” rating received by CAD, the spot only runs after 11:00 pm. Moreover, this spot ran on a pay-tv station. This commercial is in line with, and in fact substantially less provocative, than other Australian spots that contain an “S” rating.

Section 2.6 – The AM Advertisement does not present aggressiveness or violence in any way whatsoever. It is also clearly a humorous advertisement. The AM Advertisement utilizes an over-the-top jingle to further emphasize the “humorous” nature of our commercial. The AM Advertisement also does not use any obscene language or anything that can be depicted as unsafe.

Moreover, and importantly the AM Advertisement does not exploit sex and sexuality. AM takes necessary steps to ensure that its advertisements (including the AM Advertisement in question) are aired at appropriate times given its target audience. AM has complied with the Code as it relates to potentially sensitive content and sexual innuendo.

AM understands that its brand/business, is not for everyone. However, while we understand that there is a subjective element to one's "tastes", the AM Advertisement objectively complies with the letter of the Code, and the intent and spirit of the Code. There is nothing unlawful about the AM business, nor is there anything unlawful in the AM Advertisement. We run this commercial in other countries (including Canada and the United States) without issue.

It is also of utmost importance to mention that Ashley Madison in Australia has seen almost 200,000 signups from Australia on its Ashley Madison site during the time that the AM Advertisement has run (and when the ASB started receiving the complaints). In fact, we have averaged on a monthly basis over 2,500,000 site visitors per month in Australia, and currently have 1,066,478 total members in Australia. Needless to say, while it may appear that there have been some complaints to the ASB, the data illustrates otherwise: That a significantly higher number of Australian citizens support and like our lawful website.

Moreover, Ashley Madison has experienced substantial success in Australia, and in turn we have contributed a significantly high number of marketing dollars to the Australian broadcasters and the Australian economy in order to continue the momentum.

Avid looks forward to continuing and expanding our marketing spend in Australia. In fact we recently completed a new commercial that will air shortly in Australia. In fact, we have even taken some of the complaints to heart in producing this new spot (especially from the female gender point of view). The data clearly illustrates that the vast majority of the Australian public have welcomed our company and our innovative advertising. It would be patently unjust for the ASB to take any action against the AM Advertisement based on a vocal minority. The ASB should continue to allow Avid to broadcast its lawful Ashley Madison commercials during the approved time-slots (post 11:00 pm). It is compliant with the Code and there is no regulatory or legal basis to decide otherwise.

We trust that this addresses the complainants' concern. Ashley Madison would like to thank the ASB in advance for its consideration of our response. We look forward to hearing from you and continuing to work co-operatively with the ASB and its Board.

Thanks in advance for your continued consideration.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement is promoting infidelity which is not appropriate for children or adults to view. The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which

discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted it had recently upheld this advertisement on free to air television in case 0036/15 where:

The minority of the Board considered that the reference in the advertisement to 'other than my wife' was not discriminatory as it was a statement that focused on the unique aspect of this service – being a 'dating' service for married people.

The majority of the Board however considered that 'other than my wife' is a statement which singles out wives as a group of people and implies that wives are not important within a marriage, can be replaced and to a degree normalises seeking someone other than your wife. The Board noted the advertiser's response that the tone of the advertisement is intended to be funny.

The majority of the Board however considered that the emphasis on the term 'wife' gave a strong message that 'wives' are inadequate or somehow lacking and that this suggestion is degrading to wives and does amount to material that demeans or makes people think less of wives. The majority of the Board considered that this element of the advertisement breached section 2.1 of the Code...

...The minority of the Board considered that the depiction of men swiping through pictures of women who have voluntarily signed up to this service is a realistic demonstration of using the service and that this is not of itself discriminatory against or vilifying of a person or group of people based on their gender.

Following considerable discussion the majority of the Board considered that whilst current technology can involve swiping a screen the overall impression of this scene in the advertisement is of men flicking through a catalogue of women and that this depiction strongly depicts women as a commodity to be bought and is demeaning and vilifying of women.

The Board considered that this element of the advertisement amounted to material which discriminates against or vilifies a person or section of the community on account of their gender...

...The Board determined that the advertisement did breach Section 2.1 of the Code."

Consistent with its previous determination in 0036/15 the Board considered that the advertisement did breach Section 2.1 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board acknowledged that the complainant's main concern is a moral objection to the product itself.

In its consideration of case 0036/15 the Board noted that "Of most relevance for Section 2.4 is consideration of the audience of the advertisement...the current television advertisement screens late at night. The Board considered that the advertisement did treat sex/sexuality and nudity – in particular the images and the intimation of having an affair – with sensitivity to the likely adult audience at that time of night."

In the current advertisement the Board noted its screening on Pay TV and considered that in the context of an advertisement screened within relevant programming the advertisement does treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted its previous determination in case 0036/15 where:

"The Board noted the complainants' concerns about the consequences of affairs which can include violence and breakdowns of family units. A minority of the Board considered that an advertisement which blatantly encourages men to have sexual relations with a woman who is not their wife is contrary to Prevailing Community Standards on Health and Safety due to the associated issues linked to extra marital affairs and relationship breakdown.

Following considerable discussion however the majority of the Board noted that whilst the advertisement is promoting a service which many members of the community would find to be morally questionable, in the Board's view there is no obligation on the viewer to take up the advertiser's services. The Board noted the advertiser's response regarding the high number of subscribers to their website in Australia and considered that the high volume of complaints may indicate that community practice and community standards are at odds with one another. However, the Board noted the actual content of the advertisement and considered that there was nothing in the advertisement itself which would be a breach of Prevailing Community Standards on health and safety."

Consistent with its previous determination the Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.1 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Please be advised that we have fully complied with the Board's decision and with the self-regulation system. We have completely ceased broadcasting this advertisement, and in fact have introduced a new advertisement that addresses the Board's concerns. The advertisement in its unmodified form is NOT available to the public in Australia. We have contacted the various broadcasters and are currently following up to ensure that they do not run this advertisement, but rather swap it out fully with a new advertisement that is compliant with the ASB's Code. We have been informed that the advertisement has been removed and has not run at all since March 9th, 2015.

